

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUVENAL RIOS, individually and on
behalf of all others similarly
situated,

Plaintiff,

v

AIRBORNE EXPRESS INC, et al,

Defendant.

No C-05-2092 VRW

Related to case no
C-05-2203 VRW

ORDER

Juvenal Rios, class representative in this putative class
action, has filed notices of voluntary dismissal pursuant to FRCP
41(a)(1). Doc #75 of 05-2092; Doc #62 of 05-2203.

FRCP 23(e)(1)(B) provides that the court "must direct
notice in a reasonable manner to all class members who would be
bound by a proposed settlement, voluntary dismissal, or
compromise." FRCP 23(e)(1)(B). Accordingly, to implicate the
mandatory notice rule, the dismissal must "bind the class through
claim or issue preclusion." See Rule 23(e), Advisory Committee
Notes.

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1 When FRCP 23(e) does not apply, the court has discretion
2 to compel notice to other class members under FRCP 23(d)(2) ("the
3 court may make appropriate orders * * * requiring, for the
4 protection of the members of the class or otherwise for the fair
5 conduct of the action, that notice be given in such manner as the
6 court may direct to some or all of the members of any step in the
7 action"). This discretion is appropriate when the lack of notice
8 induces other class members to rely on the activity of the class
9 representative, thereby prejudicing their ability to bring
10 independent actions on their claims. Shelton v Pargo, Inc, 582 F2d
11 1298, 1314 (4th Cir 1978); see also Wright & Miller, Federal
12 Practice and Procedure § 1797.6.

13 For both cases here, plaintiff dismisses the class
14 allegations without prejudice. Doc #75 of 05-2092; Doc #62 of 05-
15 2203. Hence, this voluntary dismissal does not preclude other
16 class members from bringing suit and does not trigger Rule 23(e)'s
17 mandatory notice rule. Nevertheless, plaintiff fails to show that
18 voluntary dismissal does not prejudice absent class members by
19 having induced their reliance on the pendency of these actions.

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1 Accordingly, plaintiff is ORDERED to submit an
2 application, not to exceed twenty pages, supporting his request for
3 the court's approval of voluntary dismissal of these actions on or
4 before August 31, 2006. The application shall explain how
5 potential prejudice to class members who may have relied on the
6 pendency of these actions can be avoided, through notice to the
7 putative class or that notice is not necessary in the present case.

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9 IT IS SO ORDERED.

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12 VAUGHN R WALKER

13 United States District Chief Judge
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